

## **Law in Peace Negotiations**

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## Forgiveness, its Pedagogical Balance and Transition in Colombia<sup>\*</sup>

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### 13.1. Introduction

Without a doubt, Colombia has managed to shift in a few years from a public discussion of the conflict that was centred on justifications – particularly on what were called its “objective causes” – and on mutual attribution of responsibility for the beginning of hostilities and their degradation to a discussion about victims and perpetrators and their possible types, and then to a discussion about transitional justice. The intensity of this discussion is all the more paradoxical when one realizes that the peace attained so far is partial at best. This premature discussion about transition, and particularly about its conditions and benefits, has successfully displaced the discussion about “which of the wars was fairer”.

What should be the role of forgiveness<sup>1</sup> in Colombia’s transitional process? Even though forgiving and asking for forgiveness cannot fully replace truth, reparation for victims, justice – nor the institutional reform needed to prevent a relapse into violence – it cannot be

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<sup>\*</sup> An earlier version of this chapter was published in a Colombian theological magazine, see Antanas Mockus “¿Para qué el perdón?” in *Theologica Xaveriana* 141 (2002), pp. 47-60. Translation by Mateo Reyes.

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<sup>1</sup> [Translator’s note: The terms “forgiveness” and “pardon” will be used to translate the Spanish term “*perdón*”. Subsequent analysis will make clear that the term “forgiveness” corresponds more closely to the notions of moral and cultural pardon, whereas the term “pardon” is normally used in the context of legal pardon, as in amnesty.]

seen as a mere complement to these either. The paradox is that while transitional justice emphasizes the necessity of indulgence to attain peace, and offers a wide range of measures intended to make that peace sustainable (which may include forgiving and asking for forgiveness), international courts have evolved in the direction of avoiding the worst cases of impunity in a way that reduces the space for forgiveness.

In fact, Colombia is attempting to make a transition from a multi-party conflict (State, FARC, ELN and paramilitaries) to peace within the framework of a productive tension between international law and transitional justice: international law as exemplified by the Treaty of Rome that created the International Criminal Court, ratified by Colombia in 2002, and transitional justice as illustrated in Colombian legislation by the Justice and Peace Law, passed in Congress in 2005, drastically transformed by a Constitutional Court ruling in 2006 and further modified by a recent Supreme Court ruling (July 2007) which rejected the applicability of the legal type of sedition.<sup>2</sup> Today, crimes against humanity cannot be legally pardoned, and the obligations of truth and reparation for the victims cannot be eluded. At the same time, transitional justice makes conscious exceptions and concessions in order to facilitate peace in order to defend the rights of possible future victims. In this context, are there any spaces left for processes of forgiveness, and what would these spaces be?

The central thesis of this article is that forgiveness is possible but difficult and demanding. The more strictly its conditions are fulfilled, the larger its benefits. Even if they do not affect what is achieved in terms of justice, truth and reparation, inter-subjective acts of asking and granting forgiveness, as well as subjective acts of unilateral forgiveness, can contribute to transitions such as the one that has begun in Colombia.

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<sup>2</sup> This ruling has weakened the symmetry that the current peace process with the so-called paramilitaries would have built for eventual peace processes with the FARC and the ELN. The Justice and Peace Law in fact applies to all groups and it specifies that any subsequent more favourable legislation, if passed, would apply to all who have availed themselves to it in the past.

In Section 13.2 I propose a characterization of forgiveness and a reconstruction of its constituting conditions. The possibility of forgiveness as an interpersonal process is based on a series of assumptions that I will explain. However, not everything that we normally call forgiveness meets these conditions. This is why in Section 13.3 I examine cases of imperfect forgiveness, including forgiveness that is granted without a previous request of forgiveness, or apology. On the other hand, as the transgressed norms that can give rise to processes of forgiveness come in three types, legal, moral and cultural, in Section 13.4 I will distinguish between three kinds of forgiveness (legal, moral and cultural), depending on their effects over possible sanctions: suspension or suppression of legal sanctions (typically prison or fines), relief from guilt, or relief from social rejection and its corresponding shame. In Section 13.5 I outline a few considerations about the difficulties and possibilities associated with forgiveness when there is a marked divorce between law, morality and culture, that is, where illegal behaviours are morally and culturally approved or legal obligations have lost moral and cultural support. In such contexts there may be cases of legal forgiveness (pardon) that are not at the same time cases of moral or cultural forgiveness. Peace agreements in Colombia during the twentieth century would fall under this category, having been insufficiently accompanied by integral processes of forgiveness. These peace agreements, and the current situation in which there seems to be moral and cultural forgiveness granted by many Colombians to the paramilitaries, are the topic of Section 13.6. Section 13.7 considers what Colombia could learn as a society by including forgiveness as part of its process of transformation. In the context of a process of reconciliation, the capacity that forgiveness has to repair broken norms would translate into the rebuilding of trust in institutions and among people. Finally, in Section 13.8 I consider how forgiveness can accompany a transitional justice process – whether as a complement or as a central axis in its social understanding and assimilation.

### **13.2. The Nature of Forgiveness**

Forgiveness is governed by some conditions or “constituting rules”. We can try to make explicit these conditions, the presence of which we

consider indispensable for there to be forgiveness (at least in its original sense).

- a. *Condition of affront.* In order for person A to forgive person B, it is necessary for person B to have offended or caused some harm or damage to A, or to have refrained from doing something good to A (it suffices for A and B to share this conviction).
- b. *Condition of responsibility.* The offended party (A) must be able to believe that the offender (B) could have avoided causing that harm (that is, the offender had a choice, and was free to cause the affront or harm).
- c. *Condition of free request, risk and preference.* The offender must ask for forgiveness acknowledging that he or she acted inappropriately and must submit to the possibility of not being forgiven by the offended party (this possibility must be less preferable than receiving forgiveness).
- d. *Condition of free generosity.* The offended party must accede, willingly and free of coercion, and not in exchange for something (here lies the “excessive” nature of forgiveness), to consider and accept this request. Forgiving means giving more than is due. From the origin itself of the word, to forgive means to give doubly, excessively.
- e. *Condition of reparation.*<sup>3</sup> The offended and the offender must both feel that through this sequence of free acts (requesting and accepting), in some way the affront and the relationship between them have been repaired (this may include some material reparation, but it goes further). By answering affirmatively to a request of forgiveness, the offended party considers the offender to deserve the application of a rule of reciprocity.<sup>4</sup>

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<sup>3</sup> It could be argued that this condition is automatically fulfilled if the previous four are fulfilled, but perhaps not reciprocally. One could imagine successful cases of unilateral forgiveness (see below).

<sup>4</sup> There is a social norm of reciprocity according to which it is not correct to deny forgiveness to one who asks for it genuinely. This is especially valid for cultural norms such as avoiding bodily contact between strangers (think of the degree to

- f. *Condition of normative consequences.* Reparation as I understand it includes the commitment to refrain from equal or similar affronts, harm or oversight. This means that there is an acknowledgement of the normative background shared by the offended and the offender – forgiveness reinstates the validity of a norm originally transgressed by the affront, harm or omission.
- g. *Condition of restoration of identity.* Forgiveness restores and enriches the identities of the offended and the offender as good people; by having asked for forgiveness and by having granted it, and by having restored the shared normative horizon, they see their condition as moral subjects restored or improved.<sup>5</sup>

Let us take a more careful look at some aspects of forgiveness as outlined by these conditions. Asking for forgiveness for something one is not responsible for, simply because the other attributes responsibility to us, is taking part in a simulation of forgiveness. A constituent condition of forgiveness is that the forgiven party has acknowledged and taken responsibility for his affront, or at least that the one who forgives can presume such responsibility.

The condition of responsibility allows us to make a clear distinction between asking for forgiveness and offering explanations; I do not have to ask for forgiveness for something that was out of my hands to do or to prevent, but I can explain the circumstances that show precisely that the events escaped my responsibility.

In order that forgiveness be an act of generosity – as it is – forgiving must be something that someone, another human being, can either do or not do for the person who asks. Consequently, asking for forgiveness is placing oneself fully in the hands of the other person, acknowledging his or her freedom and accepting the other as a moral subject and as an agent capable of generosity. It means to take the other person as free and capable of goodness. It is not hard to understand why it is often so difficult to ask for forgiveness, since there is a

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which in supermarkets in the U.S. any accidental brush is accompanied by a “sorry”).

<sup>5</sup> The last three conditions (5, 6 and 7) make forgiveness conducive to the restoration of the relationship.

risk of being refused, and the person who asks forgiveness is in a radical situation of dependency on the other person's good will.

Forgiving is generally an altruistic gesture. An altruistic action is not calculated to produce reciprocity, and this is precisely why it does produce it. Asking for forgiveness and forgiving predispose the other person to do the same thing. But the risk of non-reciprocity seems essential.

One must be able to count on forgiveness as a *possibility* but not with certainty, not as something one can expect and count upon ahead of time. Nonetheless, this *ex ante* lack of certainty, necessary as it is, is becoming increasingly limited by what some have called the progressive colonization of daily life by legal regulations, and by the increasing development of supranational legal regulation. These developments in the legal sphere tend to impose external restrictions on forgiveness, and also to broaden the sphere of rights that cannot be waived. On the one hand, these developments tend to prevent, at least in those cases where there are collective goods that have been affected or threatened, the waiving of legal sanctions. On the other hand, they can sometimes make forgiveness a possibility – if with limitations – guaranteed in advance (right to clemency).<sup>6</sup> If the risk of not being

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<sup>6</sup> In discussions among the founding fathers of the United States constitutional order, there are two arguments for defending the right to grant pardons: (1) the practical argument of achieving peace at the cost of there being some measure of impunity, and (2) the possibility of correcting a judicial error due to the fallibility of judges and the law's imperfections in capturing the nuances of cases. I am grateful to Pablo Kalmanovitz for pointing out to me this discussion in a personal communication. As he said, "in the Federalist Paper #74 there is a discussion about the presidential power to grant pardons which may offer interesting elements for developing an analysis of legal pardons. There are two arguments for granting the executive such power, one is a moral argument, and the other is an argument from prudence. The moral argument is that the application of punishment by legal institutions tends to omit morally relevant components of particular individual cases, and thus may be excessively severe. Pardon would be a corrective measure for the moral blindness of legal institutions, something close to what in the Anglo-Saxon tradition is called *equity* (which responds to what may be seen as an essential lack of alignment between law and morality). The argument from prudence refers to rebellions and consists in the familiar imperative of restoring peace and public order. The first argument suggests a way in which legal



forgiven disappeared completely, and also if the asker of forgiveness is not at liberty to refrain from asking (that is, if he or she is forced to ask), its nature of excessive gift, of magnanimity, is lost – then there is no forgiveness. Perhaps this is why even in those cases in which the law stipulates the right to ask for forgiveness, and the right to forgive, this does not constitute a “right to forgiveness”. *There is no right to forgiveness.*

The constituting conditions allow us to understand better the benefits of forgiveness. What they basically capture is that forgiving an affront, harm or oversight restores the validity of a norm, or helps to repair an agreement, and it allows the forgiven person to recover her standing in the eyes of the offended and third parties as a “good person”, or as a responsible moral subject. Thus, the risky nature of asking for forgiveness and the excessive nature of forgiving are justified by their contribution to the sustainable restoration of norms, identities and relationships.

Asking for and receiving forgiveness benefit both parties. He or she who forgives frees him or herself from resentment. Forgiveness begins to re-establish the relationship, and it cures the forgiven person of fear of punishment and revenge. Also – and perhaps more importantly – it helps the forgiven person to overcome feelings of guilt and shame. In this sense, forgiveness is based on retribution.<sup>7</sup>

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pardons can in fact contribute to the divorce between law and morality; if the law is perceived as excessively severe, then the undersupply of forgiveness can lead to a loss of legitimacy; conversely, the oversupply of forgiveness would cause a lack of credibility in the law, and an effectiveness deficit. In the second case there may be similar effects”.

<sup>7</sup> According to Hannah Arendt, punishment and forgiveness have in common the fact that both attempt to put an end to something that otherwise could continue indefinitely (see Lino Latilla Calderón, “Análisis de la significación política de los conceptos de perdón y promesa en Hannah Arendt [Analysis of the political significance of the notions of forgiveness and promise in Hannah Arendt]” in *Utopía y Praxis Latinoamericana* 35, 2006). Jon Elster condenses Kant when he writes that, “retribution is a way of acknowledging the actor as a moral subject” (Jon Elster, *Closing the Books*, Cambridge, 2004, p. 272). Under ideal circumstances, pardon would have a similar role.

What if one has asked for forgiveness and was not forgiven? Feelings of guilt and shame are possibly attenuated; at least one did one's part in the process and it could be said that part of the sanction has been met. It could also happen that, if empathy with the offended party is high, being notified of their forgiveness can intensify guilt and shame (this can be transitory or permanent).

That forgiving provides benefits cannot be emphasized enough. Forgiveness cures the forgiver of resentment and bitterness. This is why unilateral forgiveness is possible, and also why forgiveness can have an effect even in cases in which it is not communicated to the forgiven party.

All this seems to indicate *prima facie* that both parties, the asker and the forgiver, can re-evaluate in good faith the request of forgiveness due for example to new information about the facts or the intentions. However, in order to do this, strong arguments need to be presented, and even then it is worth making a distinction: what has been forgiven remains forgiven, and the discussion is open only in regard to what has been discovered. Normally there is no forgiveness that extends indefinitely (new events are not automatically forgiven); one must face the new facts. This is why one can say that forgiveness requires truth.

To sum up, in order for there to be full forgiveness there must have been an affront and a relationship in need of repair, an agreement about a responsibility acknowledged by both parties, a request of forgiveness that includes incurring the risk of failure – asking for forgiveness and not being forgiven – and a free decision by the offended party that allows for the affront and the relationship to be deemed repaired. Also, there must be a tacit or explicit commitment of non-repetition of the behaviour for which forgiveness was requested, that is, an adhesion to the normative background on the basis of which the behaviour can be recognized as an affront, harm or omission.<sup>8</sup> Thus, apart from re-establishing or reasserting a shared criterion of judgment, forgiveness

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<sup>8</sup> Given the complexity of the conditions and the unavoidable sequence of actions it involves, one may foresee the existence and the richness of *atonement rituals* associated to forgiveness.

repairs and enriches identities; the one forgiven recovers his identity as a good human being, and also both the forgiver and the forgiven share the virtue of mutual generosity for having taken the road of forgiveness.

The constituent conditions aim to describe in simple terms a know-how that allows us to exclude “deformed” or “weakened” versions of forgiveness, and to recognize “fully achieved” forgiveness. In what follows I will consider some derivative meanings, particularly unilateral forgiveness, communicated and not, which constitute two “moral” variations of the original full forgiveness.

### **13.3. Imperfect Forgiveness: How Necessary Are the Constituting Conditions?**

The constituting conditions help us to understand the enormous strength of forgiveness as an alternative form of justice, as a way to repair relationships, and as a way to rebuild the collective and social adhesion to norms. These conditions also help us to understand the fragility of processes of forgiveness; in fact, failure to meet one of these conditions is sufficient to produce a failed, weakened, or innocuous form of forgiveness.

If the *condition of affront* is not met, there is no reason to request or to grant forgiveness. There is nothing to forgive. Consensus about the existence of an affront is itself a demanding starting point.

If the *condition of responsibility* is not met, forgiveness becomes trivial, as when someone asks for forgiveness for having pushed somebody unintentionally and without having been able to avoid it.<sup>9</sup>

If the *condition of free request, risk and preference* is not met, the instance of forgiveness becomes unilateral generosity, and it does not guarantee that the forgiven party acknowledges its fault or adheres

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<sup>9</sup> Or as someone who apologizes for an imperfect command of a language or for not being sufficiently aware of the rules of protocol; apologizing for not following the rules exactly and apologizing for breaking a cultural norm without feeling that any moral obligation has been broken are two cases of purely ritual forgiveness.

to a normative criterion from which that fault is seen as a fault. Without that condition, the offended party can forgive but that forgiveness becomes “merely moral” and lacks a binding nature. Moreover, to forgive one who has not asked for forgiveness, or demanding a guarantee that forgiveness will be granted before it is requested, eliminates the risk associated with such request. Conversely, to be forced to ask for forgiveness is especially humiliating and it tends to cause falsehood and resentment.

If the *condition of free generosity* is not met, for example when forgiveness is a mere formality or when it has been forced from outside, the forgiver may claim that in her heart of hearts, she has not forgiven, or that her forgiveness was not sincere. This entails violating the necessary freedom for the social norm of reciprocity to operate. Forgiving by force is also humiliating and produces falsehood and resentment.

If the *condition of reparation* is not met, the feeling of debt or of a mistreated relationship remains, or at the very least there is still uncertainty about whether the debt has been settled and the relationship restored. Forgiveness without reparation is incomplete, imperfect, and ambiguous in its consequences. In the event of facing the physical impossibility to repair the damage, reparation by a third party – not as a right but as a free act of generosity – can do some good. Undoubtedly there is a tension between reparation as a free, spontaneous and gracious gesture, and reparation as a right. We could be facing a case where the transforming potential of an altruistic action is undermined by turning this action into something that is requested.

If the *condition of normative consequences* is not met, then one of the most important functions of forgiveness fails to operate: clarifying the norm, re-establishing the agreement, and in this way reducing uncertainty and restoring the predictable nature of reciprocal behaviour, which is a key factor for interpersonal trust.

If the *condition of restoration of identity* is not met, then it is as if the loss of the identity of “good person” was upheld before oneself and the other, when perhaps the greatest motivation for taking the risk

of asking for forgiveness is to escape this loss, which derives from the fault or omission.

Consider some examples of deformed forgiveness. A is forced to ask B for forgiveness, or B is forced to grant forgiveness not in conscience but by social pressure or threat. Or both parties act voluntarily, in full conscience, but are perceived by others as acting moved by threats or other means alien to conscience and to normative social pressure (for note that there can be social pressures not centred on social or cultural regulation – norms, conventions, etc. – but on interests). The interpersonal relationship may have been improved but the norm is weakened.

In relation to unilateral forgiveness, it provides the forgiver with the benefit of overcoming resentment and bitterness. It also has the *potential* to restore the relationship, identities and consensus about the validity of the norm transgressed, but it does not guarantee such effects, which are assured by the type of forgiveness that encompasses the moral and cultural dimensions and meets all the constituting conditions. The table below compares full forgiveness with two variations of unilateral forgiveness, that which is communicated to the forgiven person (and eventually to third parties), and that which is not (private forgiveness).

Constituent conditions for forgiveness	As interpersonal process	As individual action	
		Communicated unilateral forgiveness	Non-communicated unilateral forgiveness
Condition of grievance	Yes	Arguable	Unclear
Condition of responsibility	Yes	Arguable	Unclear
Condition of free request and preference	Yes	No	No
Condition of free generosity	Yes	Yes	Yes
Condition of reparation	Yes	?	?
Condition of normative consequences	Yes	?	?
Condition of restoration of identity	Yes	?	?

**Table 1.**

Purely moral, unilateral forgiveness seems to increase its excessive nature, the “grace” of forgiveness, but it breaks the interpersonal rite, its conditions and eventually its restorative power. To forgive one who has not asked forgiveness undermines the ritual effectiveness of forgiveness. In cultural forgiveness the rite of forgiveness is central (particularly saying the right words in the right time and context). On the other hand, since unilateral moral forgiveness does not presuppose a sequence of interactions, is it closer to a mental state that supervenes without a mediating decision, or is it an action that results from a decision? At the very least, when forgiveness is communicated to the offender or to third parties, there must be a decision to communicate it.

To summarize, to forgive unilaterally, or to offer unilateral forgiveness (conditioned or not) entails consequences that cannot be ignored; it potentially weakens several aspects of forgiveness, some of which are crucial, such as repairing a relationship or restoring norms and identities. However, unilateral forgiveness can, even unintention-

ally, have beneficial effects on the interaction between offender and offended.

### **13.4. Three Kinds of Forgiveness: Legal, Moral and Cultural**

#### **13.4.1. Law, Morality, and Culture: Three Regulatory Systems**

Legal norms are typically written. They have defined temporal and spatial validity; fixed, previously defined instances and procedures for their application; and a range of sanctions foreseen in advance and also procedures to apply and appeal them. Informal norms may come from society as a whole or from a social group (social norms or cultural rules) or they may be self-imposed by people (moral norms).

Obedience to social norms produces admiration, social recognition, trust and/or good reputation; disobeying them produces social rejection and censorship, which tend to produce shame and then mistrust and bad reputation.

Obedience to moral norms is born out of a sense of duty and the self imposed demand to be consistent with one's own principles; although it may produce self-gratification out of self-admiration, one does not obey in order to achieve gratification, this is a by-product. Disobedience to moral norms tends to produce guilt, and since it can be foreseen, fear of guilt can have a preventive effect.

The separation between law, morality and culture is a historical fact. Some key landmarks along the path of this differentiation took place in Ancient Greece (Socrates, for example, drank hemlock to maintain his simultaneous obedience to the legal norms of Athens, his city, and the personal, moral norms that demanded that he continue his philosophical inquiry; the cynics clearly placed their morality above the cultural conventions of their city and their age), and others in modern times (with its clear affirmation of individual autonomy and its commitment to democratic principles to modify the law; also with the liberal principle that one can demand of another person, as a recognized legal subject, only to abide by valid law).

Norms that when violated give rise to the process of forgiveness are of three kinds: legal, moral and cultural. It does not matter if in

some cases the same behaviour is forbidden from different perspectives and with different consequences (such as “thou shalt not kill”), which illustrates an extreme case of harmony between law, morality and culture. This harmony can be defined more weakly as a lack of moral and cultural acceptance of illegal behaviours and the moral and cultural support of legal obligations.

Depending on the type of norm that has been violated, we distinguish between three kinds of forgiveness: legal forgiveness (L-pardon), moral forgiveness (M-pardon) and cultural forgiveness (C-pardon). Generally it would seem that in the same way as we distinguish between norms, it is possible to discern three roads to reparation, sanction and forgiveness. Forgiving a debt is at first sight an L-pardon, forgiving for not having given importance to the debt (which produces guilt) is an M-pardon, and asking for forgiveness to one’s friends and colleagues for having let them down by breaking the commitment to pay a debt (which produces shame) is asking for C-pardon. This is an example where all three pardons refer to the same behaviour. There are M-pardons (which restore a moral norm that is expressed or should be expressed as self-regulation, and the transgression of which causes guilt) that are not simultaneously C-pardons (in which a social norm that is expressed by mutual regulation through social censorship is restored, the transgression of which is followed by shame or fear of shame). There are also C-pardons that are not M-pardons, as when one apologizes for having brushed someone unintentionally and therefore without feelings of guilt (although one may feel some guilt for being inattentive). There are C-pardons that are at the same time M-pardons, when the norm restored is both moral and social (for example, following unfair public censure). Some simpler examples are: one asks for C-pardon and eventually obtains it for having violated rules of etiquette (which does not engender feelings of guilt, nor the risk of a legal sanction); a daughter forgives her mother unilaterally and in silence for not having been close during her infancy (this is an M-pardon that overcomes her own resentment<sup>10</sup>); a tax amnesty is an L-pardon.

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<sup>10</sup> As can be seen from this example, the possibility of forgiving unilaterally probably stems from the differentiation between law, morality and culture. Reasons for



As I said above, the sanction for the violation of a moral norm carries a self-imposed sanction: guilt. In this sense, M-pardon could be understood as forgiving oneself (or alleviating one's guilt). Nevertheless, the M-pardon we are interested in here is that of morally forgiving another, that is, not of sanctioning (through a moral judgment) someone who has violated a moral norm in order to avoid or alleviate the feeling of guilt that could come from such sanction. In this sense, moral pardon can be understood as a commitment not to "throw in the transgressor's face" the grievance, but rather to suspend the personal reproach and to disallow what has been forgiven to interfere in the relationship. Forgiving oneself is a derivative possibility that has become central with the catholic and modern assertion of a person's responsibility to herself.<sup>11</sup>

If one has removed all moral reproach through M-forgiveness from someone, can one still shame him before others or take part in a legal process against him? I think the answer is affirmative, for the independence between the three regulatory systems allows for it.

There are faults against oneself with very small, or not very visible, consequences for others (such as abusing food). These faults do not mobilize any social or legal norms. Whoever commits these faults feels guilt or is "indebted" to herself. The person can forgive herself, reducing reproach in exchange for a commitment to frugality in the future (a rule is restored and an identity is rebuilt).

Does one ask forgiveness to oneself? Does one place oneself in the hands of an internal judge with the power to forgive or not forgive? My intuition tells me that one does, even if everyday language shows that everyone understands what is to "forgive oneself", but the expres-

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unilateral forgiveness can be coming to a new understanding, an interest in restoring the relationship, or the wish to be free of resentment.

<sup>11</sup> Apologizing to a divinity or to a group seems to be a derivative possibility as well, which helps give a secular perspective to our approach. However, if the root of forgiveness were divine forgiveness or forgiveness by the collectivity, it would be easier to reconstruct the effect of forgiveness on the reparation of a broken norm.

sion “to ask oneself for forgiveness” forces the common use of language.

If *A* feels that he has committed an affront against *B* according to his moral norms, and *B* knows the facts but in the light of his moral norms (*B*’s), and of social and legal norms shared with *A*, *B* does not feel affronted, and *A* knows this, then *A* can ask and grant himself an M-pardon and thus mitigate his guilt. This is a legitimate form of M-pardon.

A similar situation where *B* was in fact affronted but did not realize it (for example he was unaware of the facts, and maybe had he known them he would not have taken offense) would produce a cynical M-pardon. (One example: someone responsible for a reckless act with lethal consequences repents, flagellates himself, and then forgives himself deep inside.) This would be a private “hand washing” without effects for the victim, like purchasing and consuming an anti-guilt pill.

If *B* feels that *A* feels guilt because he has affronted her, because he has harmed her by breaking a moral norm that *B* does not share (for example, not to tell white lies), *B* can deem it legitimate and fair to alleviate *A*’s guilt by forgiving him.

In cases of severe affronts, the mere possibility of asking for forgiveness implies either that the action was immoral from the start or an acknowledgement of immorality *a posteriori*. Improper behaviour is not morally neutral for the forgiver. There may have been a change in the moral evaluation of the action in question (following moral reasoning, for example) or a change with respect to legal or social norms. In some cases, forgiveness solves part of a divergence but another part may subsist and evolve through personal freedom (such as when each person chooses their adult religious or sexual preferences) or through argumentation (which does not necessarily lead to consensus) or through democratic law (which does impose a common rule).

Another extreme case of M-pardon is when for both the offender and the offended there has been a violation of shared legal and social norms (like “thou shalt not kill”) and the offended party decides to forgive internally but not to forgive in public, and lets justice take its course, even collaborating with it without bitterness or resentment.

Making an M-pardon public involves a good amount of C-pardon; the difference is that C-pardon is not unilateral, it implies the request of forgiveness. In this case, an M-pardon that is made public without trying to diminish legal or social sanctions can be an attempt to attenuate hostility and its risks. Whoever M-forgives unilaterally, privileges a relationship between moral subjects (separating it from other relationships) and gives up the attribution of moral blame. Since there are inalienable rights, and since homicide does not just harm an individual but also society as a whole, the relationship between legal subjects and cultural subjects cannot be resolved by an act of benevolence by the moral subject. In cases such as homicide, in contrast to, e.g., a standing debt or to simple theft, the victim cannot L-pardon. Under what conditions and within which limits can there be C-pardon, that is, can one invite society to share one's forgiveness and to forgive as well? Someone can M-forgive internally to alleviate his resentment but may consider C-pardon deeply harmful in terms of wider social learning. The boundaries between moral regulation among moral subjects, via reproach or blaming, and cultural regulation are not easy to establish: to stop reproaching or blaming a moral subject for one of his actions does not necessarily imply to stop censoring the behaviour or to shame any person who has engaged in it or could engage in it.<sup>12</sup>

One type of forgiveness can have effects over the other regulatory systems, and thus open the door for new possibilities of forgiveness. Let me introduce two examples of the effects of processes of forgiveness on regulation:

*Example 1: Asking forgiveness for attempting legally to prevent unionization*

If I ask for forgiveness, I align my morality with the morality of those who promote or defend unionizing. If my justification for my attempt to prevent unionization is that my behaviour was in line with what is culturally accepted, I have the choice to adjust my morality and face single-handedly the conflict between my new morality and my

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<sup>12</sup> If we go along with James Guilligan's conclusions, it is far from convenient to increase shame and reduce guilt. M-pardon makes a society more dependent on shaming, and this leads to more violence than guilt.

original cultural regulation, or maybe try to transform my original cultural regulation (by spreading, for example, my perspective change in the social spheres that I frequent, in specialized public debates, or in the media).

I suggest that an M-adjustment can lead to a C-adjustment and both can lead to an L-adjustment, for example by passing a law that is more favourable to unionization. With a strong democratic culture on board, L-pardon should integrate all three regulatory systems. We have not yet explored to what extent a strong democratic culture could and should grant legal pardon the force of cultural and moral forgiveness.<sup>13</sup>

*Example 2: Guilt or shame for having risked absurdly one's life*

Does one have the right to act with serious imprudence? "I do as I please with my life" is a common M-justification for risky behaviour. There are social circles that celebrate the taste for risk, that is, circles where taking risks is C-valid. However, it seems clear that taking high risks may have a negative effect on people who are psychologically close to oneself, and it may damage one's future selves.<sup>14</sup>

It is easy to imagine a high-risk athlete retiring. Would he ask for forgiveness? It is more difficult to imagine the same attitude at the group level. Rather, accidents tend to induce collective and public manifestations of loyalty to the practitioners of a high-risk activity.

Whoever becomes member of a criminal organization sacrifices decades of his life by joining illegal activities. Can one imagine that drug traffickers, paramilitaries and guerrillas ask their families, the communities affected, and society as a whole for forgiveness for absurdly risking their own lives? By asking forgiveness for having put their own lives at excessive risk, and by forgiving them, both sides would consolidate a consensus around the principle that life is sacred.

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<sup>13</sup> Should we welcome the criminal who has served his sentence with open arms? Or, just as we keep his criminal record, should society maintain expressions of social censorship? Should these expressions diminish as a function of the transgressor's good behaviour? Must the ex-convict perform notable contributions to be fully accepted?

<sup>14</sup> See Derek Parfit, *Reasons and Persons*, Oxford University Press, 1984.

Asking one's family, community and society forgiveness for taking excessive risks in one's own life would help make more visible how valuable that life is for others. It would help to consolidate, from a different angle, the principle "Thou shall not kill".

### **13.5. Implications of Forgiveness in the Divorce Between Law, Morality and Culture**

Let us turn now to a highly simplified version of three types of society in conflict. In the first, there are tensions between what the law requires and what some people's moral judgment dictates, or what various cultural traditions consider acceptable, but these tensions feed the democratic debate and produce legal, cultural and moral change; legal transgressions are kept at a very low level and are frequently rejected morally and culturally, and legal obligations are generally supported by morality and culture. In other words, there is harmony between law, morality and culture. In the second type, there are whole areas of behaviour where what is culturally accepted takes primacy over what is legal. Here, behaviours and agreements that are against the law are frequently made. In other words, there is a divorce between law, morality and culture but it is maintained within limits that prevent violence; turning to violence is exceptional and is rejected by the majority. In the third, the divorce between law, morality and culture is worsened by the systematic use of violence to preserve or systematically induce constellations of inter-dependent illegal behaviours.

#### **13.5.1. Forgiveness in Societies with Some Tension Between Law, Morality and Culture**

Even in highly pacified societies where the great majority of behaviours comply with the law, there are tensions between the three regulatory systems. These tensions are solved in various ways: there are areas in which the law does not interfere, under the premise that there are large areas of human conduct (for example the sexual preferences of adults) exclusively regulated by morality and culture (or even only by morality, considering barriers to social censorship); and there are areas where the law ceases to regulate because the other regulatory systems are sufficiently effective and convergent (for example the prohibition

to spit on the street). In addition, democratic processes (e.g., public deliberation, or the formation of organizations and procedures to change the law) allow for discussion and changes in the law while the law is applied; they also allow efforts to change the law in order to reduce or to extend areas in which society as a whole accepts the existence of cultural or moral pluralism.

Different tensions are thus the source of simultaneous and coordinated change in the three regulatory systems. Basically, four simultaneous processes are possible: abidance by and “conscientious” application of the current law; questioning such application; questioning the norm itself (that is, whether the particular law is just or not); and questioning cultural or moral norms that run against the law. We speak of tensions here precisely because these processes do not undermine the effectiveness of regulation, particularly of legal regulation. Tensions propel change without putting into question the validity or the relevance of the three regulatory systems. Instead, these have complementary and co-determined dynamics.

Here the independence between social pardon (public), moral pardon (private) and legal pardon (public, granted by specialized authorities with an express mandate, and following regulated processes) tends to be an interesting source of change (legislative change, or change in shared criteria, or change in personal morality).<sup>15</sup>

In a democratic society, like the one here described, those areas not regulated by the law are the ones that would benefit most from a culture of “good forgiveness”, characterized by a confluence between the willingness to forgive and private and public rigor in matters of forgiveness. Forgiveness would lead to perfecting the moral and cultural regulations.

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<sup>15</sup> Consider: “I M-pardon you, even though I am not willing to C-pardon you yet (particularly because you have not accepted taking the risk of asking for forgiveness) and I would like to L-pardon you, but this would force me to discuss publicly if we would all be willing to forgive in the future, or to consider the possibility of forgiving similar actions”.

### **13.5.2. Forgiveness When There is Divorce Between Law, Morality and Culture**

As I said earlier, there is divorce between law, morality and culture when moral and cultural regulations become autonomous to the point of neutralizing and threatening certain realms of legal regulation. In these practical realms, informal regulation that authorizes or even mandates illegal behaviour takes primacy.<sup>16</sup>

Where there is divorce between law, morality and culture it is quite possible to find an abundance of agreements contrary to the law (agreements to evade taxes, agreements to carry out acts of corruption). This situation is significantly aggravated when agreements to break the law and other illegal behaviours are “protected” or induced through the use or threat of violence.

Here, more than a setting propitious for forgiveness, there tends to be generalized indulgence, resignation, or even a form of negative social capital – by having jointly participated in illegal actions, and by deriving joint benefits, there arises interpersonal or inter-group solidarity, so there are relations of complicity but also the possibility of mutual extortion.<sup>17</sup>

When there is divorce between law, morality and culture, relationships begin to be regulated by one or two of the three systems. Cultural regulation becomes crucial and tends to “informally” define the limits that separate what is acceptable from what is not. If this is the case, forgiveness, and particularly what we have called C-forgiveness, comes undoubtedly to the forefront. The lighter the weight of the law,

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<sup>16</sup> A boy in the Colombian province of Chocó captured this aspect of illegality very well in a drawing submitted to the first *Goodbye to Cheating* contest, sponsored by Mexico’s *Fondo de Cultura Económica* and the Colombian Education and Culture Ministries: “You cheat once, and then that cheating leads you to another one, and you end up trapped in a labyrinth of cheating” (accompanied by the drawing of a labyrinth).

<sup>17</sup> A reading of *Crimes and signs. Cracking the codes of the underworld* by Diego Gambetta (Princeton University Press, 2008) has suggested the ambivalence of complicity relationships built around criminal activity. The criminal needs to be sure that his partner really is a criminal, but if he is an authentic, accredited criminal, it is not logical or easy to trust him.

the greater legal impunity there is, and then the role played by social norms becomes all the more crucial, as crucial as the non-legal mechanisms available to maintain and protect such social norms. The rule of law is in large part replaced by the rule of custom, and the imperfections of the rule of custom are resolved by means of forgiveness.

However, when there is divorce between law, morality and culture, legal impunity can be compensated by “codes of honour” (often arbitrary and violent) within which there can be room for forgiveness (C-pardon), which is applied in a strongly discretionary manner. Within a context of culturally accepted illegality, M-pardon (such as the unilateral pardon we referred to previously) or C-pardon (which follows culturally imposed rituals) easily turns into a commitment (or the ratification of a commitment) to avoid the law: “I forgive you” becomes “I will not sue you, I will not become a civil party, I will not even approach the attorney’s office or the law to find out about the progress of the investigation or legal proceedings against you”. Where there is cultural tolerance of illegality, forgiveness can mean passivity, complicity with legal impunity or resignation. One illustration of this point of view can be found in the dynamics of forgiveness associated to domestic violence. Forgiving is, in many cases, avoiding or postponing the intervention of a third party.

### **13.5.3. Forgiveness When There is Divorce Between Law, Morality and Culture Underpinned by Violence**

Where there is cultural tolerance of illegality, reinforced by intimidation through violence, forgiveness (and sometimes unilateral forgiveness) can be the most comfortable path to a “normalization” of relationships, which means no more and no less than the acceptance of the rules of the game imposed by violence. Often times the victim, by forgiving unilaterally, does practically the only thing that it was in her power to do. To forgive can quite simply mean to prevent and avoid the dynamics of retaliation. It can be an attempt to contain the desire for revenge or to avoid a total feeling of powerlessness. Where there is no law, forgiveness can be a ritual and cognitive resource through which the weaker party re-establishes a certain normative order.



*When there is violence*, it becomes the central element around which forgiveness is organized: *one asks for forgiveness for the violence used; one grants or withholds forgiveness for violence suffered*. Everything else becomes secondary. Rather recently, international law (and in some cases domestic law) has introduced the requirement of *reparation to victims*. Criminal law, with all its emphasis on punishment and exemplary retribution, includes today more than ever the civil law, with its emphasis on restoration of the *status quo ante* (or the closest possible status) and on economic compensation as a means to this end. Conditions of violent divorce between law, morality and culture generate not only violence; in Colombia, for example, there have been enormous changes in land ownership. Economic damages associated with violence receive today larger attention.

But the basic reason why violence is so problematic is that it is impossible to restore life. To the extent that priority is given to the supreme good of life, violence should be seen as something intolerable, something around which society must build an implacable taboo. Thus, given the irreversibility of violence, it is not enough to ask for forgiveness, it is not enough to submit oneself to the risk of non-forgiveness, nor is it enough to restore the validity of the norm (the “never again, not myself and not others”). It is not enough to restore respect for the victim’s human dignity either. The legally mandated material and moral reparations, which establish the primacy of the law, are also not enough. Violence is the sacrilege of our times. This is why asking and granting forgiveness are not enough in this case.

Humanity understands that the handling of serious human rights violations linked to premeditated and planned violence by organized groups (as in the case of massacres), or violence that is virtually present (for example in extortions based on life threats carried out by these groups), or mixed forms of violence (as with systematically planned and executed kidnappings) cannot be left to practical considerations or local interpretations.

### **13.6. Some Aspects of Forgiveness Related to the Internal Conflict in Colombia**

Granting L-pardon but not C-pardon and even less M-pardon seems to have been the Colombian solution in most of the eleven peace negotiations concluded in the 20th century, all of which practically repeat the same article granting pardon and amnesty.<sup>18</sup> Perhaps the lack of ritualization of forgiveness prevented the neutralization of the over-ritualization of violence.<sup>19</sup>

The excessive distance between L-pardon on the one hand and M-pardon and C-pardon on the other undermines the legitimacy of L-pardon, because L-pardon is seen as an arrangement between “those at the top” that is fulfilled in a very different way when applied to lower levels of the illegal organizations and its sympathizers, privileging commanders and mistreating the rank and file. Transitional justice implies (almost) by definition a lot of L-pardon; but if L-pardon is not accompanied by C- and M-pardon, reconciliation can be very partial and whatever peace achieved is unstable.

Conversely, those results achieved more recently have led to a measure of social indulgence (C-pardon) and moral tolerance (M-pardon or even the absence of perceived seriousness of these faults) towards the paramilitaries. The citizens’ despair of violence, the effectiveness of the paramilitaries, and the failure of the peace attempts at *El Caguán* have led many people to M-approve and C-approve the actions of paramilitaries. There has been some degree of L-pardon but for a majority in society (or a large part of it) this L-pardon is not suf-

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<sup>18</sup> Medófilo Medina, Efraín Sánchez (editors), *Tiempos de paz. Acuerdos en Colombia, 1902-1994*, Alcaldía Mayor de Bogotá, IDCT, Bogotá, 2003.

<sup>19</sup> See María Victoria Uribe, *Matar, rematar y contramatar*, CINEP, Bogotá, 1990. More recently, in May 2007, some paramilitaries acknowledged having dismembered living persons as part of their training.

ficiently generous. That majority has granted greater C-pardon and M-pardon than L-pardon.<sup>20</sup>

In its first bill before Congress, the government offered a very wide L-pardon, which was later narrowed down following strong pressure, both national and international. Finally the government accepted, with some reluctance, a reduced definition of L-pardon that was mandated by the Colombian Constitutional Court; the Court's ruling closed further options in the future, but it protected those who had opted for taking advantage of the law before the ruling. The media (particularly the printed press) has undertaken a broad revelation of particularly gruesome aspects of paramilitary actions. These revelations are deeply ambivalent in that they have two possible consequences, which are mutually contradictory. Having endorsed the L-pardon, we begin to recognize *ex post* its scope and content. The partial L-pardon together with these revelations leads some of us to C-indignation and M-pardon, and others to C-pardon and M-indignation. The most obvious result is a mixed situation: those who L-pardon do not M-pardon, but they channel their indignation through legal means; they do not C-pardon either. The victims themselves, for whom it is clearly more difficult to forgive, have split, and many of them are attempting to limit L-pardons, but accept them as one accepts a bargaining chip. The result is that practically nobody forgives in every sense, and nobody refrains from forgiving in at least one of the senses. This allows the government to emphasize what it has in common with each position.

In principle, given the evolution of international humanitarian law (IHL) and given Colombia's signature of the treaty that established the International Criminal Court (ICC), it is no longer possible in our country to L-pardon crimes against humanity, and it will not be possi-

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<sup>20</sup> Perhaps the paramilitaries' greatest political achievement in the past ten years is to have polarized Colombian society into a majority that supports c-pardon and m-pardon to them but supports a relative legal severity regarding the commanders; this majority deems correct to think and say that l-pardons, especially the ones contemplated in the original transitional law, was excessive, but now, after the Court adjustments, the dose is fine. The paramilitaries have been more concerned with c-pardon than with the other two, since this is the condition for constituting their political project.

ble to pardon war crimes after 2009. However, transitional justice, as defined by the Justice and Peace Law and by a previous law with its regulatory decree, proposes full L-pardon for small crimes and partial L-pardon for two types of atrocities already mentioned. Can there be M- and C-pardon for these crimes? Is it convenient that there is, in addition to a clear reduction on L-punishment? The answer is yes, but one must acknowledge the size of the challenge involved.

The transitional process can benefit greatly from a full forgiveness in the form of C-pardon and M-pardon, even if these cannot include traditional legal amnesty. We are part of humanity; international agreements signed by Colombia represent commitments that can be evaded for some time but not indefinitely. There is no longer room for L-forgiving the most serious crimes, that is, crimes against humanity and war crimes. Recent developments in international law limit the national right to forgiveness. More precisely, they introduce a separation between criminal responsibility for crimes against humanity and processes of cultural forgiveness, which are in my opinion useful and perhaps necessary for reconciliation, even if this is understood in its minimalist sense as passing from anger and hatred to indifference. The question now is whether M-pardon, and especially C-pardon, can accompany L-punishment. The trend here is the same as in the case of the reduction of L-punishment: an increasing conditioning of forgiveness to reparation and the disclosure of truth. In abstract terms, one may suggest the following sequence: asking for forgiveness must be associated with a disclosure of truth, and forgiveness can only take place after all efforts to establish truth and to achieve reparation have been exhausted, and this should ideally occur when the only pending matter is a retributive sentence.

IHL, the ICC and, in Colombia, the Justice and Peace Law seem to have put an end to the legal pardon of crimes against humanity. However, the UN Security Council and the ICC Prosecutor can temporarily suspend an ICC prosecution. Even though the word “pardon” is not mentioned, one may imagine that a very successful process of forgiveness could be respected by the Court (successful due to its pacifying effects and its pedagogical balance; thus successful in fulfilling its constituting conditions). Under current circumstances, only a very co-

ordinated process involving the three types of pardon, and including all parties in the conflict, would be internationally defensible.

### **13.7. The Pedagogical Balance of Forgiveness as Part of a Transition**

Theoretically, the same final dose of truth, justice and reparation can result from partial pardon, indulgence (or impunity) calculated to be accepted, indulgence (or impunity) negotiated between the parties, or from the unpredictable adjustment introduced by the courts to any of the options above. Even though these options may apparently arrive at the same point, there are variations between their respective meanings, and their pedagogical balance – the lessons that have been internalized by society, individuals and groups who once turned to irregular means and who were allowed to employ them by their social or cultural environment (which has played a key role in encouraging or dissuading them).

At first sight, maximizing the pedagogical legacy seems to compete with the will to make peace. Peace is so desirable that negative lessons do not matter. However, experience shows that cycles of court reviews – unpredictable in their timing and depth – by both national and international courts or by governments of different orientation, progressively correct these lessons.

What is the additional or different pedagogical balance if the parties take the road of forgiveness and reconciliation? Part of the pedagogical balance of a successful process of forgiveness is that of regaining trust in norms and institutions. The most important thing that forgiveness attempts to repair is the broken norm, *just as atonement rituals do*.<sup>21</sup> Pablo de Greiff has highlighted the importance of asking forgiveness in processes of national reconciliation, which are interpreted

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<sup>21</sup> One could think, moreover, that if there is sufficient learning of “never again”, and a basic level of respect among subjects is established, then forgiveness would facilitate a broad flow of truth, and would provide a context of “confession” outside the judicial sphere. Forgiveness demands reparation, but not impossible or superhuman reparation. Lastly, forgiveness helps to decrease retribution.

as processes for the *reestablishment of trust* in institutions and people, which are for de Greiff processes of overcoming resentment.<sup>22</sup>

Margaret Walker develops and applies to transitions the concept of resentment introduced by P.D. Strawson.<sup>23</sup> This is a specific type of anger reaction by which the aggressor is attributed “responsibility for the defeat, or the threat of defeat, of *normative expectations* (...responds to perceived *threats to expectations based on norms* that are presumed shared, to the boundaries that offer protection against harm or affront, and that are usually both deeply moral and institution-alized (even if ineffectively) by legal means)”. Resentment arises from the fact that the aggressor freely chooses to destroy trust in shared norms. One can resent the weakening of existing norms even without being a victim of the illegal act. “In this sense, the insecurity of others is mine as well. Breaching impersonal norms puts everyone at risk”.<sup>24</sup> Loss of confidence in the basic limits induces generalized demoralization and resentment.

De Greiff asks about the contribution of apologies to processes of reconciliation, understood as overcoming resentment (not only the victims’ but the generalized resentment for the rupture or threat to basic norms of coexistence). The definition of apology used by de Greiff is explicitly minimalist. “It would suggest that something is an apology if and only if it accepts responsibility and expresses regret”.<sup>25</sup> De

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<sup>22</sup> Pablo de Greiff, “The Role of Apologies in National Reconciliation Processes: On Making Trustworthy Institutions Trusted” in Mark Gibney, Rhoda E. Howard-Hassmann, Jean-Marc Coicaud and Niklaus Steiner (eds.), *The Age of Apology: The West Confronts its Past*, University of Pennsylvania Press, 2007.

<sup>23</sup> Margaret Walker, “Damages to Trust”, quoted by De Greiff in “The Role of Apologies”. For Strawson, see “Freedom and Resentment” in his *Studies in the Philosophy of Thought and Action*, Oxford University Press, 1968.

<sup>24</sup> De Greiff, “The Role of Apologies”.

<sup>25</sup> De Greiff points out that other authors who follow this criterion are Nicholas Tavuchis, *Mea Culpa. A Sociology of Apology and Reconciliation*, Stanford University Press, 1991, p. 36; Lee Taft, “Apology Subverted: The Commodification of Apology”, *Yale Law Journal* 109 (2000); Deborah L. Levi, “The Role of Apology in Mediation”, *N.Y.U. Law Review* 72 (1997).

Greiff conceives of apologies as essentially pro-norms, or norm affirming. Thus,

[i]t can be said that the reaffirmation of the validity of the (breached or threatened) norms can be expected to allay resentment, and in this way, to contribute to reconciliation [... The law] can help generate trust between citizens by stabilizing expectations and thus diminishing the risks of trusting others. Similarly, law helps generate trust in institutions (including the institutions of law themselves) by accumulating a record of reliably solving conflicts.<sup>26</sup>

Nicholas Tavuchis presents a similar conception of the social function of apologies:

Genuine apologies [...] may be taken as the symbolic foci of secular remedial rituals that serve to recall and reaffirm allegiance to codes of behavior and belief whose integrity has been tested and challenged by transgression, whether knowingly or unwittingly. An apology thus speaks to an act that cannot be undone but that cannot go unnoticed without compromising the current and future relationship of the parties, the legitimacy of the violated rule, and the wider social web in which the participants are enmeshed.<sup>27</sup>

De Greiff acknowledges, however, that the affirmation of norms through apologies is far from what is required to rebuild civic trust after violence (trust between citizens and of citizens to institutions). Rebuilding this trust requires in his opinion concrete actions that produce truth, justice, reparations and institutional reform. But also decisive for reconciliation is a change of attitude derived of the acceptance of responsibility and repentance inherent in asking for forgiveness. By accepting responsibility and expressing regret, those who now deserve trust (institutions and individuals) manage to inspire it in those who had lost it.

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<sup>26</sup> De Greiff, “The Role of Apologies”.

<sup>27</sup> Nicholas Tavuchis, *Mea Culpa*, p. 13.

Could forgiveness damage the pedagogical balance of transitional justice? Must there be processes that combine individual and collective elements when asking for forgiveness and granting it? Or must each victim decide on her own, by facing each perpetrator alone or in a non-public dialogue? In order to address these questions I can only suggest one criterion: the contribution of forgiveness will be proportional to the extent to which its constituting conditions are satisfied; to the degree that such forgiveness is far from “imperfection”; to the degree to which the restoration of the moral rule is articulated consistently with the restoration of the social norm; and to the extent to which forgiveness integrates respect for the basic limits to the three regulatory classes, legal, moral and cultural. There is room for forgiveness, but it is not easy.

### **13.8. Forgiveness in Colombia: Is it Supplementary or Central to the Transition Process?**

In *Destiny Colombia* (1997), a sequence of workshops conducted under the guidance of the international expert Adam Kahane, 42 representatives of the Colombian political spectrum, including spokespersons for extremist forces, reached a consensus on four possible scenarios for the next sixteen years in Colombia. The first scenario described relative passivity *vis-à-vis* the conflict; the second predicted with some precision the peace process led by president Pastrana; the third foresaw the failure of such process, and then the path taken under the two Uribe administrations, including a “timely constitutional reform” that allowed for reelection; the fourth scenario saw a way out that was acknowledged as more difficult and slower, based on peaceful expressions of an organized and mobilized civil society. It is very telling that none of these scenarios mentions the word “pardon” or its derivatives.

Asking for forgiveness and forgiving require nowadays in Colombia a series of unconditional leaps of faith that probably none of the actors are willing to take. Two distinct possibilities remain. *First*, there is the possibility of using forgiveness as a form of therapy complementary to internal political-legal and external political-legal processes, the former urging for peace earlier than later (in a sense, at any price), the latter guided by the internal and international pedagogical



balance: humanity has reached consensus on a number of concepts and institutions aimed at avoiding impunity for the most serious crimes. This is a useful if secondary use of forgiveness. It is like trying to correct through forgiveness, in the last moment, the imperfections of a judicial process that is irreparably plagued with limitations.

*Second*, there is the possibility of reversing the terms: to judge that in Colombia there has long been a disposition to forgive (as long as it serves to stop the horror we have gone through over the past decades) and that we want to do it above everything else. “Peace is a right and a duty”, says our Constitution. Since we are part of humanity – in ways that are also expressed in the importance given by the Constitution to international treaties signed by Colombia – our forgiveness does not allow us to evade a series of obligations. We must take into account the world and its present transition towards a reduction of impunity for the most serious crimes; the time when history was written by the winners to their benefit is over. By taking the most universal restrictions into account in its pardons, Colombia can give an example.

Now forgiving has become more difficult: your adversary’s barbarism is no longer an excuse for your own barbarism. As a victim you have rights. But having been a victim does not exempt you from the responsibility you may have as perpetrator. One must confess and one must pay – in both senses: punishment and reparations. Forgiveness surrounded by truth and justice would set a landmark in the history of Colombia and the world.

As a start, it may be a good idea to come together in asking humanity for forgiveness for all the things we Colombians have done to each other, for not having done enough to prevent the propagation of the “anything goes” rationale, and for all the times in which we could have collaborated with justice or acted to protect the rights of others but we failed. By assuming the process inclusively, we do not intend to make everyone’s responsibility equal: there are national and international laws to help us distinguish the substantive from the incidental.

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